



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 070013

Petitioner, Ronald Simons, applied to the Building Commissioner for permission to construct a new building containing sixteen residential dwelling units with underground parking per plans at 310 Hammond Pond Parkway. The application was denied and an appeal was taken to this Board.

On March 1, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 12, 2007, at 7:00 p.m., as the time and place of a hearing on the appeal in the Selectmen's Hearing room on the sixth floor of the Town Hall. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published March 22, 2007 and March 29, 2007, in the Brookline Tab, a newspaper published in Brookline. The hearing was rescheduled to May 24, 2007 at 7:00 p.m., and notice of the rescheduled hearing was published in the Brookline Tab on May 3, 2007 and May 10, 2007. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: RONALD SIMONS
Location of Premises: 74 HAMMOND POND PKY BRKL
Date of Hearing: **05/24/2007**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a variance and/or special permit from

1. **4.08; Affordable Housing Requirements; Special Permit Required.**
2. **5.09; Design Review; Special Permit Required.**
3. **5.20; Floor Area Ratio; Variance Required.**
4. **5.30; Maximum Height of Buildings; Variance Required.**
5. **5.44.4; Accessory Underground Structures; Special Permit Required.**
6. **6.02.1; Table of Off-Street Parking Space Requirement; Variance Required.**
7. **6.02.2.d; Off-Street Parking Space Regulations; Special Permit Required.**
8. **6.03.1.a; Location of Required Off-Street Parking Facilities; Variance Required.**
9. **For the Design of All Off-Street Parking Facilities:**
6.04.2.d; Variance Required.
6.04.4.e; Special Permit Required.
6.04.5.b; Variance Required.
10. **6.05; Bicycle Space and Design Regulations; Variance Required.**
11. **7.02.1.a; Signs in M-Districts; as regulated by 7.01.1.f; Signs in S, SC, and T-Districts; Special Permit Required.**

Of the Zoning By-Law to construct a new building containing sixteen residential dwelling units with underground parking per plans

at 310 HAMMOND POND PKY BRKL

Said Premise located in a M-1.0 district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Diane Gordon and Board members Lawrence E. Kaplan and Jesse Geller.

Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Polly Selkoe, Assistant Director for Regulatory Planning, distributed the Planning Board Report dated April 12, 2007. Mr. Allen then described the factual background for the petition as follows:

310 Hammond Pond Parkway is the combination of two lots (306-308 Hammond Pond Parkway and 312-314 Hammond Pond Parkway) for a total of 24,543 s.f. located near the intersection of Hammond Pond Parkway and Heath Street in the Chestnut Hill area. Two two-family dwellings currently exist on the property. Abutting the site to the north is an apartment building; to the south is a three-family dwelling. To the rear of the property are several two-family dwellings along Belmont Road. The immediately surrounding neighborhood is primarily residential; several large commercial uses exist nearby along Route 9. The Brookline-Newton town line is approximately 100 feet from the subject property. Hammond Pond Parkway is a state-managed divided parkway; approximately 45 to 50 feet of land on either side of the road is managed by the state's Department of Conservation and Recreation.

The petitioner, Ronald Simons, proposes to demolish the existing two two-family dwellings and construct a 16-unit residential building with underground parking for 34 vehicles, 4 of which would be for visitors. An additional 2 visitor parking spaces would be located above ground in front of the building. The four-story building will be approximately 24,543 s.f. with a central elevator and two interior stairwells providing access to the units. Four units would be located on each floor, and most units would have two bedrooms. The square footage of the building breaks down as follows: first floor

- 6,353 s.f.; second floor - 5,929 s.f.; third floor - 5,929 s.f.; and fourth floor - 5,929 s.f. The upper floors would have balconies on the corners of the building and at the center of the building's side walls.

The building, approximately 80 feet deep by 79 feet 9 inches wide, would sit above a larger garage, approximately 99 feet 8 inches wide by 121 feet 6 inches deep. The garage would extend past the building's sides and to the rear. One of the existing curb cuts would be retained and another relocated to provide for both a driveway into the garage and a circular drive in front of the building. Thirty parking spaces would be located within the garage behind a recessed garage door; four visitor parking spaces, two of which would be handicapped accessible, would be located within the garage but in front of the recessed garage door. Twelve of the garage spaces would be compact. An additional two parallel surface parking spaces would be located in front of the building on the circular drive. The garage would also provide space for storage, maintenance, and electrical rooms.

The garage's roof would protrude slightly above grade towards the rear of the property; lawn would be planted on top of the garage and an arbor and patio area would be provided at the right rear corner of the garage roof. A guard rail would run along that portion of the garage wall above grade. In order to address possible drainage concerns at the rear of the property, the petitioner is proposing to install a planted berm ranging from six inches to two feet high as well as a drainage pipe along the rear property line to direct runoff towards the front of the property and into the main sewer line.

The zoning relief required is as follows:

Section 4.08.4 – Affordable Housing Requirements: Special Permit Required

Section 5.09.2.d – Design Review:

Any new structure with ten (10) or more dwelling units requires a special permit subject to the design review standards listed under Section 5.09.4(a-l). The most relevant sections are described below:

- a. *Preservation of Trees and Landscape:* Though the proposal would remove a number of trees at the rear of the property because of the underground garage, the trees at the southeast corner of the lot and on the DCR-owned land will be maintained. A number

of new shade and flowering trees are expected to be planted along the edges of the property, including at the sides, rear and front of the building and garage.

- b. *Relation of Buildings to Environment:* The proposed building is located in a transitioning neighborhood between large commercial uses located along Route 9 and smaller multi- and single-family dwellings further away from the arterial roads. Several large apartment buildings exist or are expected to be built in the neighborhood in the near future. The building is setback sufficiently from neighboring properties so that significant visual impacts are not expected.
- c. *Open Space:* The proposal incorporates a significant amount of landscaped open space at the front of the building, primarily because of the DCR-owned land, and a large amount of open lawn space exists to the rear of the building for its residents.
- d. *Circulation:* The project makes use of one existing curb cut and relocates another curb cut (subject to DCR approval). The project allows for two-way vehicular circulation in and out of the garage, as well as one-way vehicular circulation in front of the building. The pedestrian walkways will be at least five feet wide, including the reconstructed sidewalk along Hammond Pond Parkway, and a raised crosswalk will facilitate pedestrian access across the front vehicular drive. A warning sign will alert pedestrians to vehicles exiting the garage.
- e. *Storm water Drainage:* The project will make use of a drainage system to ensure all surface water runoff is directed to the stormwater system and not to surrounding properties, which has been a recent problem in the neighborhood. The applicant proposes to install both drainage pipes as well as construct a berm at the rear of the property to ensure the existing conditions in the neighborhood are not worsened.
- f. *Utility Service:* The plans for the project indicate that telephone, cable and electric wiring will be placed underground. The transformer will be placed in an underground vault near the southeast corner of the garage.
- g. *Heritage:* The Brookline Preservation Commission has determined that the structures to be removed with this proposal are not significant.

Section 5.44.4 – Accessory Underground Structures

Section 6.02.2.d – Off-Street Parking Space Regulations

The number of parking spaces required for affordable housing units may be reduced by the Board of Appeals by special permit where it can be demonstrated that the parking needed for occupants and visitors will be below that which is otherwise required.

Section 6.04.2.e – Design of Off-Street Parking Facilities

No more than 25 percent of total parking spaces provided may be compact spaces, unless authorized by special permit.

Section 7.02.1.a – Signs in M-Districts

Section 5.63 – Accessory buildings or structures in side yards

Site Plan and Building

	<u>Required/Minimum</u>	<u>Proposed</u>	<u>Finding</u>
Front-yard setback (building)	15 feet	18.8 feet	Complies
Front-yard setback (garage)	15 feet	14.7 feet	Special Permit*
Side-yard setback (building)	18 feet (10 + L/10)	21.2 feet (northwest) 20.6 feet (southeast)	Complies
Side-yard setback (underground garage)	10 feet	10 feet (northwest) 10.6 feet (southeast)	Complies
Rear-yard setback (building)	30 feet	59.5 feet	Complies
Rear-yard setback (underground garage)	10 feet	20 feet	Complies
Usable Open Space	4,908 s.f. (20%)	7,663 s.f. (31%)	Complies
Landscaped Open Space	2,454 s.f. (10%)	8,738 s.f. (24%)	Complies
Floor Area Ratio	1.0 (24,543 s.f.)	1.0 (24,543 s.f.)	Complies

* Under Section 5.44.4, the Board of Appeals may modify the setback requirements and height limitations for underground accessory structures provided that the modification is counterbalanced by appropriate landscaping and screening.

Parking Facilities

	<u>Required/Minimum</u>	<u>Proposed</u>	<u>Finding</u>
Parking Spaces (market rate units)	28 spaces	28 spaces (plus 4 visitor and 2 Handicapped accessible)	Complies
Parking Spaces (affordable Units)	4 spaces	2 spaces	Special Permit**
Compact Spaces	8 spaces (25 percent of required parking)	12 spaces (37.5 percent)	Special Permit [†]
Garage Entrance/Exit Drive Width	20 feet (two-way use)	20 feet	Complies

Front Access Drive Width	12 feet (one-way access)	12 feet	Complies
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** Under Section 6.02.2.d, the Board of Appeals may modify the parking requirements for affordable units where it can be demonstrated that the parking needed for occupants and visitors will be below that which is otherwise required.

† Under Section 6.04.2.e, the Board of Appeals may allow up to 50 percent of parking spaces to be compact as long as one additional space is provided for every eight compact spaces above the allowed 25 percent. This project proposes four compact parking spaces above the allowed 25 percent, and it is providing four additional parking spaces beyond that which is required. A total of 36 parking spaces would be located on-site.

The Chairperson inquired if any members of the public wished to be heard in regard to the Petitioner's proposal. No member of the public wished to be heard.

Polly Selkoe, Assistant Director for Regulatory Planning, gave the following report:

The Planning Board is supportive of this application to construct a 16-unit residential building and underground garage on the lots located at 310 Hammond Pond Parkway. The developer has revised the building's design and site layout in response to comments from the DAT, and the resultant proposal addresses recent drainage concerns in the neighborhood. The proposed building has sufficient yard setbacks and provides ample parking for both residents and visitors, lessening any potential impacts on the surrounding properties. The proposal would provide sufficient usable and landscaped open space for its residents. The applicant has agreed to provide two affordable units as part of this proposal, though the size and layout of these units has not been agreed upon and should be determined before a building permit is issued. Also, building finishes and landscaping details, such as retaining wall materials, have yet to be finalized, and the applicant should return to the Planning Board to review such details with input from the DAT.

Therefore, the Planning Board recommends approval of the proposal and the plans prepared by Nunes Trabucco Architects, titled "The Parkway at Chestnut Hill" and last dated 03/22/07, and the plans prepared by CF Engineering LLC, and last dated 03/06/07 subject to conditions.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner.

He restated the various sections of the Zoning By-Law under which relief is needed. He stated that the

Building Department has no objections to the proposed development, the relief requested or the recommended conditions and will ensure that all State Code provisions are satisfied.

The Board further deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant the relief requested by this petitioner, subject to certain conditions.

The Board considered the visual relationships of the proposed sixteen-unit building to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed development will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not cause a nuisance or serious hazard to vehicles or pedestrians. The building, driveways, walkways, below-grade parking garage and open space are functional and are proper for the proposed use. The Board finds that the proposed use will add two additional affordable units in the Town.

Accordingly, the Board makes the following findings pursuant to **Sections 5.09 and 9.5:**

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed sixteen-unit building with below-grade parking.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

5. The construction of a sixteen-unit building with underground parking, as proposed, will not have increase the supply of housing available for low and moderate income people.
6. The proposal is comparable to adjacent uses in regards to massing and scaling and the relationship of building to the street edge.

Accordingly, the Board grants special permits for the construction of a sixteen-unit building with underground parking pursuant to Sections 4.08.4, 5.09.2.d, 5.44.4, 6.02.2.d, 6.04.2.e, 7.02.1.a, subject to the following conditions:

1. Prior to the issuance of a building permit, final design of facades, colors, materials, windows, rooftop details, walls, and placement of utilities for HVAC and transformers shall be subject to the review and approval of the Planning Board with input from the DAT.
2. Prior to the issuance of a building permit, final site design, including landscaping, fencing, drainage details, and garage or surface parking, shall be subject to the review and approval of the Planning Board with input from the DAT.
3. Pursuant to the provisions of Section 4.08 Affordable Housing Requirements of the Zoning By-law, the petitioner shall:
 - a. provide, as affordable, 15 percent of 16 (two) units containing 15 percent of 33 (five) bedrooms as follows:
 - (i) one two-bedroom unit and one three-bedroom unit shall be designated as affordable in accordance with the preliminary Affordable Housing Plan dated March 15, 2007, attached to and made part of this decision;
 - (ii) both units shall qualify as low and moderate income housing under the

Comprehensive Permit Law (Chapter 40B), including that they shall be sold to households with incomes less than or equal to 80 percent of area median income;

- b. sales prices shall be established such that a hypothetical household with a number of persons equal to the number of bedrooms plus one and with an income set at 10 percentage points less than the applicable income limit would be paying 30 percent of gross income toward mortgage, mortgage insurance, condominium fee and property taxes for a standard, fixed-rate thirty-year mortgage at 95 percent of sales price;
- c. each affordable unit shall be sold with the exclusive use of one parking space;
- d. floor plans, finishes and appliances shall be the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for specific floor plans, finishes or appliances which differ;
- e. no building permit shall be issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan which shall include a final schedule of units and references to specific floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;
- f. no certificate of occupancy shall be issued for any market rate unit until
 - (i) the Town has approved initial sales prices for the affordable units, condominium documents, and a marketing and selection plan for the affordable units which provides that priority, as permitted by law or

- regulation (including Chapter 40B guidelines) to Brookline residents, employees of the Town and the Brookline Housing Authority, and families with children in Brookline Public Schools, and
- (ii) all of the affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development; and
- g. the affordable units shall be sold subject to a restrictive covenant to the Town of Brookline, permanently controlling the resale price and process for such units.
4. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department and posted on the Planning Department's website.
5. One temporary construction and/or development sign, no greater than 20 square feet on each surface may be erected on site in a v-shape visible on both sides during the construction and initial leasing period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.
6. Upon issuance of a Blasting Permit from the Brookline Fire Department and the Department of Fire Services, Office of the State Fire Marshall, the approved blasting schedule shall be submitted to the Planning and Building Departments.
7. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision:

1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, fencing, grading, and location of utilities; 2) building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals



Diane R. Gordon

Filing Date:

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TOWN CLERK

2007 JUL -8 A 11:13

A True Copy:

ATTEST



Patrick J. Ward
Clerk, Board of Appeals